

REMARKS/ARGUMENTS

Reconsideration of this application, in view of the following remarks and arguments, is respectfully requested.

Claims 55-63, 65-74 and 94-103 are currently pending in this application, with Claims 71-73 having been temporarily withdrawn from consideration. In the August 19, 2009 Office Action the following claim rejections, which are respectfully traversed for reasons subsequently set forth herein, were made:

1. Claims 55-63, 65 and 74 were finally rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,794,626 to Kieturakis; and
2. Claims 66-70 and 94-103 were finally rejected under 35 USC §103(a) as being unpatentable over Kieturakis in view of U.S. Patent 4,338,952 to Augros.

1. The 35 USC §102(b) Anticipation Rejection of Claims 55-63, 65 and 74

Via independent Claim 59, each of applicants' Claims 55-63, 65 and 74 specifies, in instrumentation for treatment of the spine, an elongated member that comprises an inner actuator member disposed within an outer sleeve member, a distal portion of said sleeve member being outwardly deformed to define said transverse projections in response to relative displacement between said actuator member and sleeve member. Representatively, but not by way of limitation, applicants' claimed inner actuator member may be the inner member 30 shown in applicants FIG. 2, the outer sleeve member may be the member 32 shown in FIG. 2, and the claimed transverse projections, which are formed from deformed portions of the outer sleeve member, are the deformed strip portions 54,56 of the outer sleeve member 30 shown in FIG. 6.

U.S. Patent 5,794,625 to Kieturakis fails to disclose or in any manner suggest this claimed deformed portion of an outer sleeve. Specifically, as can be clearly seen in FIGS. 2 and 3 of Kieturakis, the outer sleeve 30 has no deformable portions which form transverse projections. The outwardly deformed blades 15 shown in FIG. 3 of Kieturakis are elements separate from the outer sleeve 30 which, when translated relative to the inner rotator sleeve 44,

axially moves the hinge 20 along the rotator sleeve 44 to outwardly bend the blades 15 which are **separate from** the outer sleeve in Kieturakis.

It is thus respectfully submitted that none of the present applicants' Claims 55-63, 65 and 74 is anticipated by U.S. Patent 5,794,626 to Kieturakis.

2. The 35 USC §103(a) Obviousness Rejection of Claims 66-70 and 94-103

Via independent Claims 59, 66 and 69, each of applicants' Claims 66-70 and 94-103 specifies, *inter alia*, "a distal portion of said **sleeve member** being outwardly deformed to define said transverse projections in response to relative displacement between said actuator member and said sleeve member". As discussed above in conjunction with independent Claim 59, Kieturakis fails to disclose or in any manner suggest this claim limitation. U.S. Patent 4,338,952 to Augros fails to in any manner cure this deficiency in Kieturakis, having been cited by the Examiner solely for its alleged teachings with respect to the use of a hinge structure in flexible cutting strips/blades.

It is thus respectfully submitted that Claims 66-70 and 94-103 are patentable over Kieturakis and Augros, whether these two references are considered singly or in any combination thereof.


3. Temporarily Withdrawn Claims 71-73

Withdrawn Claims 71-73 depend from allowable independent Claim 59 and are thus seen to be patentably distinguishable over the Kieturakis and Augros references. It is thus respectfully requested that Claims 71-73 be re-inserted in this application and allowed.

In view of the foregoing remarks and arguments, all of the claims currently pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of Claims 55-63, 65-74 and 94-103 is therefore earnestly solicited.

The Examiner is hereby requested to telephone the undersigned attorney of record at 408-548-3929 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,



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